S.B. CIVIL WRIT PETITION NO.5231/2005

Kishnaram & anr. vs. State of Rajasthan & ors.

Date : 18.10.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. RK Thanvi, for the petitioner.

- - - - -

Heard learned counsel for the petitioner.

Brief facts of the case are that the petitioner/ plaintiff filed a suit for injunction against the respondents seeking relief of restraining the respondents from allotting land of several khasras for mining purposes. The trial court after hearing both the parties and after obtaining Commissioner's report reached to the conclusion that the natural water flows from the side of Khasra No.693 and 711, therefore, the petitioner is entitled for relief of injunction so far as these khasras are concerned. The trial court also observed that for khasra no.710, the boundaries may be demarcated with the help of experts and when the report will come, then the non-applicants will be free to take steps in accordance with law. The petitioner not satisfied with the relief granted by the trial court vide order dated 22.3.2005, preferred appeal before the Court of District Judge, Jaisalmer who vide order dated 3.5.2005 dismissed the appeal of the petitioner. Hence, the present writ petition.

According to learned counsel for the petitioner, the

petitioner filed the suit for injunction so that the land of several khasras may not be allotted for mining purposes and once the land will be allotted for mining purposes, the damage cannot be cured. It was also submitted that the courts below have not appreciated the facts correctly. It is also submitted that the opinion of first appellate court will affect the ultimate decision of the suit. It is also submitted that the first appellate court did not consider the affidavits filed by the petitioner in support of its case.

I have considered the submissions of learned counsel for the petitioner and also perused the reasons given by two courts below.

It appears from the facts of the case that the trial court very carefully examined each and every facts of the case and mentioned the facts in detail in the impugned order. The trial court also considered the Commissioner's report and recorded that the petitioner could not prove the case for grant of injunction for other land.

In view of the above, if the appellate court held that unless the order of the trial court is perverse or capricious, the appellate court cannot interfere. The appellate court's view was legal and based on a decision of this Court which is referred in the order of the appellate court itself. The appellate court, therefore, rightly reached to the conclusion that it is not a case of any error committed by the trial court so as to call for

interference by the appellate court.

In view of the above, no interference is called for by this Court in the impugned order under writ jurisdiction. Accordingly, the writ petition having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya